

Amendment No. 1 to SB0898

McNally
Signature of Sponsor

AMEND Senate Bill No. 898*

House Bill No. 1166

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 25, is amended by adding a new part thereto as follows:

8-25-601. This part shall be known and may be cited as the “Optional Retirement Program for Employees of Public Institutions of Higher Education.”

8-25-602. There is established an optional retirement program for employees of public institutions of higher education operated by the board of regents and the board of trustees of the University of Tennessee.

8-25-603.

(a) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the chair of the consolidated retirement board shall serve as trustees of the optional retirement program established under § 8-25-602.

(b) The trustees shall establish an investment policy for the assets of the optional retirement program.

(c) The trustees may delegate to the state treasurer the duty to carry out the day-to-day operations and responsibilities for the administration of the optional retirement program. In exercising the delegation, the state treasurer shall be authorized to exercise such powers as are vested in the trustees that are necessary to fulfill the delegated duties and responsibilities; may assign any duties and responsibilities to the state treasurer’s staff or private vendors and contractors, as the state treasurer deems

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necessary and proper; and may consult with professionals as necessary about the administration of the program. In administering the program, the state treasurer may make such rules as deemed necessary and proper for the effective functioning of the program. Any such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The state treasurer may also establish policies, guidelines, and operating procedures in exercising the state treasurer's delegation from the trustees, including, but not limited to, complying with all applicable state and federal laws and rules.

(d) The trustees may, at their discretion, direct that the cost of administering the optional retirement program established in this part be prorated among participating employers and deducted from each participating employer's account in the state accumulation fund.

(e) The trustees shall designate a minimum of two (2) companies, not to exceed three (3), from which investment products are to be purchased under the optional retirement program. The trustees may delegate to the state treasurer the authority to procure the services of such companies in a manner prescribed by the trustees.

(f) The trustees, at the request of the board of trustees of the University of Tennessee and the board of regents, may authorize the adoption of optional features to such programs. Any such authorization shall be subject to the approval of the council on pensions and insurance. For the purposes of this subsection, "optional features" does not include optional investment products.

(g) The companies designated to provide the optional retirement program are hereby authorized to make available optional investment products to the employees of

the board of trustees of the University of Tennessee and of the board of regents who have elected to participate in the program. The companies shall act in a fiduciary capacity in selecting investment products that are suitable for the optional retirement program. It shall be the duty of the companies to report to the trustees the optional investment products made available pursuant to this subsection and to report the participant use of such options semi-annually. The investment products are subject to approval by the trustees, and the trustees reserve the right to refuse or discontinue any product offered by the designated companies.

8-25-604.

(a) Notwithstanding any other law to the contrary, any individual who is exempt from the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), and who is employed in a state-supported institution of higher education may elect membership either in the retirement system established in § 8-34-201 or in the optional retirement program established under this part. In all cases of doubt, the state treasurer shall determine whether the employee is eligible to participate in the optional retirement program.

(b) As used in this part, the term “retirement system” has the same meaning as in § 8-34-101.

(c) Each eligible employee who elects to participate in an optional retirement program rather than the retirement system shall so designate on election forms approved by the state treasurer and filed with the state treasurer and with the institution where the employee is employed.

(d) Any such eligible employee who is not a member of the retirement system and who has not accumulated creditable service thereunder as a member of a local retirement fund may make this election within thirty (30) days of employment with a state-supported institution of higher education.

(e) Any member of the retirement system or any member of a local retirement fund having rights under the retirement system may elect to participate in the optional

retirement program established under this part in lieu of participating in the retirement system while employed in a state-supported institution of higher education. Any such election shall become effective no later than the first day of the month following thirty (30) days' written notice to the retirement system and to the institution where the employee is employed. Such notification shall be made in a manner prescribed by the state treasurer.

(f) Any eligible employee who fails to make the election as prescribed in this section shall be a member of the retirement system until such employee makes the election as described in subsection (e).

(g) Notwithstanding any provision of this part or any other law to the contrary, any employee who, on or after January 1, 2005, attains either five (5) or more but less than six (6) years of creditable service in the optional retirement program, or five (5) or more but less than six (6) years of creditable service in the retirement system and the optional retirement program combined, shall have the option of transferring membership from the optional retirement program to the retirement system under the following terms and conditions:

(1) The employee is employed in a position covered by the retirement system;

(2) The election must be made on election forms prescribed by the retirement system and filed with it and the institution where the employee is employed by no later than the end of the calendar year following the year the employee completes five (5) years of creditable service;

(3) Any such transfer shall include both past and prospective membership;

(4) The transfer shall be irrevocable;

(5) The employee must pay to the retirement system a sum equal to twelve and sixty-five hundredths percent (12.65%) of the employee's earnable

compensation during the period of the employee's membership in the optional retirement program, plus interest on the amount at the rate provided in § 8-37-214;

(6) Notwithstanding § 8-37-220, the payment required under this subsection (g) shall be made in a lump sum to the retirement system by no later than the end of the calendar year following the year the employee completes five (5) years of creditable service, and may be funded in whole or in part from amounts transferred from the employee's accounts in the optional retirement program, from other eligible retirement accounts, or from other funds available to the employee. For the purposes of this subdivision (g)(6), amounts transferred from an eligible retirement account shall have the same meaning as described in § 8-37-214(g)(1). Any difference between the payment required under this subsection (g) and the amount transferred from the optional retirement program or an eligible retirement account shall be paid to the retirement system within sixty (60) days following the transfer, but in any event no later than the end of the calendar year following the year the employee completes five (5) years of creditable service. Notwithstanding § 8-35-111 or any other law to the contrary, if the payment is not funded in whole or in part from amounts transferred from the optional retirement program, the employee shall be permitted to retain ownership of the amounts without violating § 8-35-111;

(7) The employee shall have no rights, benefits, or privileges in the retirement system until the full amount of the payment required under this subsection (g) is received by the retirement system. In the event the employee fails to remit the full amount by the time specified in subdivision (g)(6), the employee shall irrevocably lose the employee's right to transfer membership from the optional retirement program to the retirement system; and

(8) All payments made under this subsection (g) shall be credited to the state accumulation fund pursuant to § 8-37-301 and not to the individual accounts of members in the members' fund.

(h) Notwithstanding § 8-25-611 or any other law to the contrary, any employee who transfers membership from the optional retirement program to the retirement system pursuant to this section may elect to receive a cash withdrawal of all or any portion of the employee's accumulated account or accounts if permitted by the relevant optional retirement company.

8-25-605.

(a)

(1) The employer shall make employer contributions at the rate of ten percent (10%) of each eligible employee's earnable compensation, plus one percent (1%) of the part of the eligible employee's earnable compensation in excess of the employee's covered compensation.

(2) The amount of salary taken into account in determining such contributions shall not exceed the maximum dollar limitation imposed by Section 401(a)(17) of the Internal Revenue Code (26 U.S.C. § 401(a)(17)). For any person becoming a participant in an optional retirement program before July 1, 1996, the dollar limitation under Section 401(a)(17) of the Internal Revenue Code (26 U.S.C. § 401(a)(17)), shall not apply to the extent the amount of compensation that is allowed to be taken into account under the plan would be reduced below the amount that was allowed to be taken into account under the plan as in effect on July 1, 1993.

(b) Employer contributions shall be credited to the optional retirement fund to provide retirement and death benefits for members and are not refundable in a lump sum for any reason, except death or as provided in subsection (c).

(c)

(1) If a participant has separated from service and has an aggregate total of less than five thousand dollars (\$5,000) credited to such participant's retirement accounts, the contributions shall be distributed to the participant, upon the participant's written request therefor, if permitted by the relevant optional retirement company. The distribution shall be made in any manner permitted by the companies holding the accounts. This aggregate total shall be increased by one thousand dollars (\$1,000) on January 1, 2002, and on each January 1 thereafter until the aggregate total distribution equals fifteen thousand dollars (\$15,000).

(2)

(A) If a participant has separated from service and suffers from a total and permanent disability, the participant may file a written request with the participant's employer for a limited lump sum distribution from the participant's accounts each year if permitted by the relevant optional retirement company.

(B) To be eligible for the distribution described in this subdivision (c)(2), the request must be accompanied with evidence showing that the participant is receiving social security disability benefits from the social security administration on account of a total and permanent disability suffered by the participant, unless the participant has met the age requirement for receipt of old age and survivors benefits under Title II of the federal Social Security Act (42 U.S.C. § 401 et seq.). If the participant has met such age requirement, the request must be accompanied with a letter from two (2) physicians that conclusively states that the participant is totally and permanently disabled and that such disability is expected to last for a continuous period of not less than twelve (12) months.

(C) For the calendar year 2004, the aggregate total of each annual distribution from all of the participant's accounts shall not exceed eighteen thousand dollars (\$18,000). This aggregate total shall be increased by one thousand dollars (\$1,000) each calendar year thereafter until the aggregate total annual distribution equals twenty-five thousand dollars (\$25,000). Each annual distribution shall be made in any manner permitted by the companies holding the accounts but only upon receipt by the employer of the applicable documentation described in subdivision (c)(2)(B) that confirms the participant's continued eligibility for the distribution.

8-25-606.

(a) Any employee or any spouse or any non-spousal beneficiary of an active, inactive, or retired employee who is eligible for a lump sum payment under this part may request the relevant optional retirement company to rollover the taxable portion of such payment directly to an eligible retirement plan.

(b) For purposes of this section, "eligible retirement plan" means:

(1) For employee transfers only, a qualified 403(a) annuity plan or a qualified 401(a) retirement plan; provided, that the plan accepts direct rollovers;

(2) For member or spousal transfers, an individual retirement account or any other plan eligible under the Internal Revenue Code to receive such direct rollovers from a qualified plan; provided, that the plan accepts direct rollovers; or

(3) For non-spousal beneficiary transfers, an individual account or annuity treated as an inherited individual retirement account under Section 402(c)(11) of the Internal Revenue Code (26 U.S.C. § 402(c)(11)), or any other plan eligible under the Internal Revenue Code to receive such direct rollovers from a qualified plan; provided, that the plan accepts such direct rollovers.

(c) Prior to making such a rollover, the relevant optional retirement company may require the individual requesting the rollover to establish that the receiving plan or account meets the requirements of this section and the Internal Revenue Code.

(d) This section shall be administered in accordance with the direct rollover provisions of the Internal Revenue Code.

8-25-607.

(a) When any eligible employee in an optional retirement program retires with retirement credit in the retirement system, the employee's retirement allowance from the retirement system shall be computed and paid in accordance with chapters 34 — 37 of this title.

(b) Employees who elect to participate under the optional retirement program shall be limited to the benefits of such optional retirement program, upon and after retirement.

8-25-608.

(a) An eligible employee who elects to participate in an optional retirement program established under this part will be ineligible to participate in the retirement system during such period as the employee is employed by a state-supported institution of higher education.

(b) While participating in an optional retirement program, such member's accumulated contributions, if any, and creditable service in the retirement system shall remain unchanged as of the date of election of an optional retirement program under this part.

(c) Interest shall continue to be credited to the employee's accumulated contributions in the retirement system.

(d) In the event that a participant in an optional retirement program assumes or returns to a position in a public school where an optional retirement program or a local

retirement fund is not available, the participant shall at that time begin or resume participating in the retirement system.

8-25-609. Any employee participating in an optional retirement program whose benefits are limited to those of that program pursuant to § 8-35-406, may authorize the transfer of the employee's accumulated contributions deposited with the retirement system to such optional retirement program upon request made to the retirement system. Such transfer shall be made within ninety (90) days of the retirement system's receipt of the request, and shall be considered to be a withdrawal of accumulated contributions and shall terminate membership in the retirement system, in accordance with § 8-35-104. Any such transfer constitutes a waiver of all rights in the retirement system and may not be redeposited with the retirement system pursuant to § 8-37-214.

8-25-610. Any optional retirement program established pursuant to this part shall honor claims under a qualified domestic relations order. For purposes of this section, "qualified domestic relations order" has the same meaning ascribed to it in Section 414(p) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 414(p)); provided, that such order may relate only to the provision of marital property rights for the benefit of the former spouse of the optional retirement program participant.

8-25-611. Upon retiring or otherwise terminating employment, an employee participating in an optional retirement program may elect to receive a cash withdrawal of up to fifty percent (50%) of such employee's accumulated account or accounts if permitted by the relevant optional retirement company, and if the employee applies for and begins receiving a lifetime distribution of the remaining portion of such employee's accumulated account or accounts. Any employee who receives a cash withdrawal pursuant to this section shall not be entitled to reestablish the withdrawn amount or any period of service represented by that amount in either the optional retirement program, the retirement system, or any other Tennessee state retirement program.

8-25-612. Any member of the retirement system who participated in the optional retirement program and received a limited lump sum distribution of contributions pursuant to §

8-25-605(c)(1) shall be entitled to establish service and salary credit in the retirement system for the period during which those contributions were made to the member's optional retirement account. To establish service, the member must pay to the retirement system a sum equal to twelve and sixty-five hundredths percent (12.65%) of the member's earnable compensation during the period those contributions were made to the member's optional retirement account, plus interest on that amount at the rate provided in § 8-37-214.

8-25-613. Any person receiving benefits from the optional retirement program established pursuant to this part who returns to service on other than a full-time basis in a position covered by the optional retirement program shall be subject to the applicable work and compensation limits set forth in § 8-36-805(1) and (2). As a condition of the employment, the person shall not be eligible for additional contributions to the person's optional retirement account nor shall the person be eligible to accrue retirement credit in the retirement system during that person's period of reemployment.

SECTION 2. Tennessee Code Annotated, Section 8-25-303, is amended by deleting the language "chapter 35, part 4 of this title" and substituting instead the language "part 6 of this chapter".

SECTION 3. Tennessee Code Annotated, Section 8-27-702(a)(2), is amended by deleting the language "§ 8-35-401" and substituting instead the language "§ 8-25-602".

SECTION 4. Tennessee Code Annotated, Section 8-34-206(a)(1)(D), is amended by deleting the language "35" and substituting instead the language "25".

SECTION 5. Tennessee Code Annotated, Section 8-34-319, is amended by deleting the section in its entirety and substituting instead the following:

The board of trustees, with the approval of the commissioner of finance and administration, may, at its discretion, direct that the cost of administering the retirement system be prorated among all employers and deducted from each employer's account in the state accumulation fund.

SECTION 6. Tennessee Code Annotated, Section 8-35-103(c), is amended by deleting the language “part 4 of this chapter” and substituting instead the language “chapter 25, part 6 of this title”.

SECTION 7. Tennessee Code Annotated, Title 8, Chapter 35, is amended by deleting Part 4 in its entirety.

SECTION 8. Tennessee Code Annotated, Section 8-36-903(a), is amended by deleting the language “retirement system” in the last sentence and substituting instead the language “state treasurer”.

SECTION 9. Tennessee Code Annotated, Section 8-36-915, is amended by deleting the section in its entirety and substituting instead the following:

Except as otherwise provided in this part, administration of the defined benefit component of the hybrid plan shall be governed by chapters 34 — 37 of this title and administration of the optional retirement program shall be governed by chapter 25; provided, however, that any reference in chapters 34 — 37 of this title to the eligibility requirements for an early or service retirement allowance under the hybrid plan shall for purposes of this part mean the eligibility requirements set forth in §§ 8-36-906 and 8-36-910. Any reference in chapters 34 — 37 of this title to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance under the hybrid plan shall for purposes of this part mean the applicable formula as set out in §§ 8-36-907 — 8-36-909 and §§ 8-36-911 — 8-36-913.

SECTION 10. Tennessee Code Annotated, Section 8-36-923(a), is amended by deleting the language “chapter 35, part 4” and substituting instead the language “chapter 25, part 6”.

SECTION 11. Tennessee Code Annotated, Section 8-36-923(b), is amended by deleting the language “§ 8-35-403” wherever it appears and substituting instead the language “§ 8-25-604”.

SECTION 12. Tennessee Code Annotated, Section 8-36-923(c), is amended by deleting the language “chapter 35, part 4” and substituting instead the language “chapter 25, part 6”.

SECTION 13. Tennessee Code Annotated, Section 8-36-923(d), is amended by deleting the language “§ 8-35-404(b)(1)” and substituting instead the language “§ 8-25-605(a)”.

SECTION 14. Tennessee Code Annotated, Section 8-36-923(e), is amended by deleting the language “chapters 34-37” and substituting instead the language “chapter 25”.

SECTION 15. Tennessee Code Annotated, Section 8-37-202(a)(2), is amended by deleting the language “chapter 35, part 4” and substituting instead the language “chapter 25, part 6”.

SECTION 16. Tennessee Code Annotated, Section 8-37-220(b), is amended by deleting the language “§ 8-35-403(f)” and substituting instead the language “§ 8-25-604(g)”.

SECTION 17. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 18. This act shall take effect upon becoming a law, the public welfare requiring it.